(3) The attending veterinarian must conduct a complete physical examination of each dolphin at least once every 6 months. The examination must include a profile of the dolphin, including the dolphin's identification (name and/or number, sex, and age), weight,[11] length, axillary girth, appetite, and behavior. The attending veterinarian must also conduct a general examination to evaluate body condition, skin, eyes, mouth, blow hole and cardio-respiratory system, genitalia, and feces (gastroin estinal status). The examination must also include a complete blood count and serum chemistry analysis. Fecal and blow hole smears must be obtained for cytology and parasite evaluation.

(4) The attending veterinarian must record the nutritional and reproductive status of each dolphin (whether in active breeding program, pregnant, or nursing).

(5) The attending veterinarian must examine water quality records and provide a written assessment, to stay at the SWTD site for at least 3 years, of the overall water quality during the preceding month.

(6) In the event that a dolphin dies, complete necropsy results, including all appropriate histopathology, must be recorded in the dolphin's individual file and be made available to APHIS officials during facility inspections, or as requested by APHIS. The necropsy must be performed within 48 hours of the dolphin's death, by a veterinarian experienced in marine mammal necropsies. If the necropsy is not be performed within 3 hours of the discovery of the dolphin's death, the dolphin must be refrigerated until necropsy. Written results of the necropsy must be available in the dolphin's individual file within 7 days after death for gross pathology and within 45 days after death for histopathology.

Done in Washington, DC, this 18th day of January 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–1637 Filed 1–20–95; 8:45 am]

BILLING CODE 3410–34–M

[11] Weight may be measured either by scale or calculated using the following formulae:

Females: Natural log of body mass= − 8.44+1.34 (natural log of girth)+1.28 (natural log of standard length)

Males: Natural log of body mass= − 10.3+1.62 (natural log of girth)+1.38 (natural log of standard length)

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Ostensible Subcontractor Rule and the Affiliation of Business Concerns Under Joint Venture Arrangements

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a revision to its ''ostensible subcontractor'' rule as set forth in its affiliation regulation to permit small businesses to enter into subcontracts with certain public utilities for the lease and use of distribution facilities (telecommunication circuits, petroleum and natural gas pipelines, and electric transmission lines) without being considered affiliated with the public utility where the small business prime contractor adds meaningful value to the contract. This revision is being considered to take into account new business arrangements which have emerged as a result of deregulation of several public utility industries.

DATES: Comments must be submitted on or before March 24, 1995.

ADDRESSES: Send comments to: Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6880, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Assistant Administrator for Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA is proposing to revise its ''ostensible subcontractor'' rule as set forth in 13 Code of Federal Regulations (CFR) part 121.401(1)(4) with regard to affiliation arising from certain continuing arrangements. Under this regulation, affiliation is generally found to exist when one firm acting as a prime contractor enters into a subcontracting arrangement with another firm who, in turn, performs the ''primary or vital requirements'' of a contract. Under this arrangement, if the prime contractor is reliant upon the subcontractor to perform the contract to the extent that the subcontractor assumes a controlling role on the contract, then the relationship will be regarded by SBA as a joint venture with the two firms deemed affiliated under the ''ostensible subcontractor'' rule. The size of a joint venture is based on the combined revenues or number of employees, depending on the applicable size standard, of both firms. For a joint venture to be considered a small business, its size cannot exceed the applicable size standard.

The SBA is considering a modification to this ''ostensible subcontractor'' rule by expressly excluding from its coverage subcontracting agreements for the lease and use of distribution facilities of public utilities for telecommunication circuits, petroleum and natural gas pipelines, and electrical transmission lines where the prime contractor lessee contributes meaningful value to the contract. This modification would allow small businesses to enter into certain arrangements with other businesses in the provision of public utility services to the government without being considered joint venturers and affiliates. The SBA is concerned, however, that such a modification could have the unintended effect of allowing a small business to act as a mere broker or intermediary on the behalf of a large business. This possible consequence, addressed in greater detail below, is an issue that the SBA will be examining carefully before making a final decision on this proposal. It should be noted that this proposed rule would specifically exempt a finding of affiliation based solely on subcontracting agreements between firms that lease and use the public utility's distribution facilities and the public utility who owns and maintains the facilities, but other relationships between the firms could still bring about a finding of affiliation.

The impact of several recent size appeal decisions issued by SBA's Office of Hearings and Appeals has led several small businesses to request that SBA reassess its regulations on joint ventures as applied to firms that lease telecommunications circuits. These decisions found resellers of long distance telecommunications services affiliated with the owner of the telephone circuits, on the basis that the provider of the lines would perform the ''primary and vital requirements'' on a government contract by providing, maintaining and repairing telecommunications circuits, and that, therefore, the relationship between the reseller and long distance provider should be regarded as a joint venture arrangement and the firms should be considered affiliated under the ''ostensible subcontractor'' rule. As a result of the existing regulation and these decisions, federal contracting opportunities have been placed in jeopardy for both small businesses and small disadvantaged businesses operating through lease arrangements for telecommunication lines and circuits. SBA believes that its size regulations should be re-evaluated in

order to assess whether the ''ostensible subcontractor'' rule continues to be appropriate in the context of the telecommunications industry as well as the other public utility services industries identified above, which appear to have similar industry characteristics.

Over the past decade, deregulation of the public utility industries identified above has resulted in the open access of certain distribution facilities of public utilities by other firms. This development has encouraged the entrance of new firms in these markets to provide specialized services. For example, in the long distance telephone market a firm (reseller) can purchase bulk access to telecommunication circuits and resell telecommunication services to smaller volume customers. The economic savings from a volume purchase of these circuits by resellers are offered to certain customers who, given their relatively small volume of business or need, could not obtain similar savings by directly obtaining telephone access through the long distance providers. The other two public utility industries under consideration in this proposed rule are also experiencing the emergence of similar business arrangements where other firms utilize the public utility's distribution facilities. In the natural gas industry, open access of interstate pipelines has resulted in a significant change in the marketing of natural gas. Prior to deregulation, 95 percent of natural gas transported through pipelines was owned by the pipeline companies. Today, over 95 percent of natural gas flowing through interstate pipelines is owned by non-pipeline companies. Additionally, open access on a limited basis is now allowed for the provision of electric power, and further modifications to legislative restrictions on the retail sale of electric services are under consideration.

SBA's preliminary assessment of the public utility industries described in this proposed rule is that there may be a legitimate basis to permit resellers of telecommunication services, and other firms that provide public utility services through the lease and use of distribution facilities, to offer their services in the Federal market as they do in the commercial market without running afoul of the affiliation rules. In many instances, these firms may add value to the contract involved and be sound, operating businesses engaged generally in the provision of telecommunications and other public utility services. Moreover, the extensive capital investment necessary to build the distribution facilities associated with providing one of these public utility services essentially precludes a firm, other than the existing public utility firms, from making such an investment in order to perform a specific Federal procurement or in order to serve small volume commercial customers. In addition, remaining regulatory requirements continue to prohibit or constrain the development of capital facilities by new entrants. As indicated above, deregulation occurring in these public utility industries has made available to other firms the use of distribution facilities of the public utilities on a sub-contractual basis. Unlike other industries, the provision of public utility services is limited to one or a few public utility providers, and new firms that are now able to enter the market do so by leasing the distribution facilities of existing public utilities. Firms in other service industries usually do not depend on the exclusive access to a significant amount of capital facilities of one or a few firms within an industry to provide their services.

As indicated above, SBA is concerned that the effect of the present regulations causing affiliation between a prime contractor and an ''ostensible subcontractor,'' based simply on the leasing of distribution facilities, may now be inappropriate with respect to these specific public utility industries. For example, even though the greatest component of value in government contracts providing telecommunications services may be the utility distribution facilities, it nevertheless may not be appropriate to regard the subcontractor or supplier contributing that component as performing a controlling role on the contract where its responsibilities are limited to the provision and maintenance of those facilities and the prime contractor provides other valuable services. The SBA recognizes that firms that lease and use the distribution facilities of these public utilities generally perform an important and legitimate economic role in the provision of utility services to commercial markets, and the ''ostensible subcontractor'' rule may unnecessarily constrain opportunities for small business in obtaining Federal contracts for these public utility services. On the other hand, SBA does not wish to create by this exception a situation in which small business prime contractors qualify for small business preferences when they merely are brokers. Thus, the exception would apply only if the prime contractor also contributes meaningful value to the contract. With respect to the concept of meaningful value, SBA has not attempted to quantify what would constitute meaningful value for purposes of this rule.

The SBA is particularly concerned that the effect of the proposed modification might lead to abuses in the small business preference programs if the modification allows small businesses to act as mere brokers or intermediaries on the behalf of large businesses. To explain further, a small firm acting as a reseller of long distance telephone services might perform several functions, such as consultative services, identification and connection of circuits, problem resolution, and billing services, in providing long distance communication services to its customers. However, these activities may be of such limited significance to the contract as a whole when compared to the services provided by the long distance telephone carrier that the carrier should indeed be properly regarded as a joint venturer of the small firm. One of the primary purposes of the ''ostensible subcontractor'' rule is to ensure that the benefits intended for small business in obtaining a government contract are enjoyed by that small business and not simply passed through to a large business subcontractor. It is not the SBA's intention to depart from this long-held policy as a result of a modification of the ''ostensible subcontractor'' rule. Comments addressing this aspect of the proposed rule would be especially beneficial to SBA's deliberations of this issue.

The SBA seeks public comments on this proposal to modify the ''ostensible subcontractor'' rule. The SBA is particularly interested in obtaining comments which address the following points: (1) The nature of the business relationship between a public utility firm and a firm that leases the public utility's distribution facilities for purposes of reselling public utility services; (2) whether the proposed rule could have an unintended adverse effect on SBA's small business programs by allowing the brokering of services provided by large business; (3) whether a requirement that the prime contractor provide meaningful value to the contract adequately protects against abuse, and if so, how meaningful value should be determined, whether quantitatively or otherwise; (4) whether any modification to the ''ostensible subcontractor'' rule should be applied to public utility industries in addition to those which have been identified in the proposed rule; and, (5) alternative approaches to this proposed rule that address the issues discussed above.

Compliance With Regulatory Flexibility Act; Executive Orders 12612, 12778, and 12866; and the Paperwork Reduction Act.

This rule has been reviewed under Executive Order 12866. SBA certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 15 U.S.C., *et seq*. The SBA has made this determination based on the fact that a limited number of Federal contracts would likely be awarded to small businesses as a direct result of this action. Thus, even though this proposed rule, if adopted as final, would make eligible previously ineligible firms for SBA procurement preference programs, SBA does not expect the number of affected firms to be significant. For purposes of Executive Order 12612, SBA certifies that this proposed rule would not have Federalism implications warranting the preparation of a Federalism assessment. For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order. For purposes of the Regulatory Flexibility Act, the SBA certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities for the same reason indicated above. For purposes of the Paperwork Reduction Act, the SBA certifies that this proposed rule would not impose any new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. § 121.401(1)(4) is revised to read as follows:

§ 121.401 Affiliation.

* * * * *

(l) * * *

(4) An ostensible subcontractor which performs or is to perform primary or vital requirements of a contract may have such a controlling role that it must be considered a joint venturer affiliated on the contract with the prime contractor. In determining whether subcontracting rises to the level of affiliation as a joint venture, SBA considers whether the prime contractor has unusual reliance on the subcontractor. This provision does not apply to subcontracts entered into with public utility concerns providing open access to distribution facilities if such subcontracts are limited to the lease and use of telecommunication circuits, petroleum pipelines, natural gas pipelines, or electric transmission lines, and if the prime contractor contributes meaningful value to the contract.

* * * * *

Dated: December 2, 1994.

Philip Lader,

Administrator.

[FR Doc. 95–1505 Filed 1–20–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–95–1759; FR–3626–P–01]

RIN 2502–AG20

Single Family Mortgage Insurance—Special Forbearance Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would permit the mortgagee and the mortgagor to enter into a special forbearance agreement requiring the payment of arrearages before maturity of the mortgage without obtaining the prior approval of HUD. It would also eliminate the present gap in reimbursement of debenture interest that occurs if the mortgagor files a petition in bankruptcy after entering into a special forbearance agreement. The purpose of this change is to encourage mortgagees to make greater use of special forbearance procedures when the mortgagor is temporarily unable to make full regular mortgage payments.

DATES: Comment due date: March 24, 1995.

ADDRESSEES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 706–1672, or, for hearing and speech impaired, (202) 706–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This rule would revise current HUD regulations governing forbearance procedures in connection with FHA insurance of single-family homes. Under the present forbearance procedures (24 CFR 203.614 (a) and (b)), the mortgagee may suspend or reduce the mortgagor's required payments for the forbearance period, but may not increase payments to recover arrearages until after mortgage maturity unless the mortgagee obtains prior approval from HUD. This rule proposes to add a new paragraph (c) to § 203.614, which would permit the mortgagee to reduce the required payments to an amount not less than 50% of the regular mortgage payments for a forbearance period of up to 6 months. On expiration of the forbearance period, the mortgagee may increase the required payments to not more than 1½ times the regular payment amount until all arrearages are repaid.

Limitations

The new procedure contains several limitations that are intended to avoid arrearages accumulating to an amount that the mortgagor cannot reasonably be expected to repay before maturity. These limitations include:

- Not more than four monthly payments may be due and unpaid at the time of execution of the forbearance agreement;
- The monthly payments may be reduced but not suspended;
- The period of reduced payments may not exceed 6 months;
- The increase in payments may not be required until 6 months after execution of the agreement; and
- The first monthly payment must be made at the time of execution of the agreement.

If greater forbearance relief is needed, the mortgagee may utilize the existing forbearance procedures, under which the mortgagee may not recover